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In the Supreme Court of the United States

OCTOBER TERM, 1951

ANN ARBOR PRESS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 472-487) is reported at 188 F. 2d 917. The findings of fact, conclusions of law, and order of the Board (R. 60-73) are reported at 85 N.L.R.B. 58.

JURISDICTION

The judgment of the court below was entered on March 23, 1951 (R. 472). A petition for rehearing filed by the Board on April 12, 1951 (R. 487), urging amendment of the court's judgment insofar as it had altered the form of notice the Board's order required (R. 488-495), was granted

on June 1, 1951, along with the requested amendment (R. 496). The petition for a writ of certiorari was filed on August 20, 1951. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U.S.C. 1254 (1).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C., Supp. IV, 141 *et seq.*), are set forth in the Appendix, *infra*, pp. 6-8.

QUESTION PRESENTED

Whether, in an unfair labor practice proceeding against an employer, the Board must plead and prove the facts showing that the labor organization which instituted the charges has filed with the Secretary of Labor and the Board the documents required by Section 9 (f), (g), and (h).

STATEMENT

Upon the usual proceedings under Section 10 of the amended Act, the Board, on July 8, 1949, issued its decision and order. The Board's decision, the merits of which are undisputed here, shows that petitioner violated Section 8 (a) (1) and (3) of the Act by (1) discriminatorily replacing two employees for their supposed leadership of an economic strike, (2) discriminatorily discharging four employees for union membership and activities, (3) unlawfully interrogating its employees concerning union membership and activities, and (4) threatening to close its business if its employees organized (R. 64-69). The Board's order requires

cessation of the unfair labor practices, reinstatement of the unlawfully discharged employees with back pay, and the posting of appropriate notices (R. 69-73).

During the Board's hearing the trial examiner denied petitioner's motions for dismissal of the complaint on the ground that there was no proof that the union which had filed the charge (Bindery Workers Union, Local 20, International Brotherhood of Bookbinders, A.F. of L.) had complied with the filing requirements of Section 9 (f), (g), and (h) of the Act. (R. 78, 79, 225, 234). Approving these rulings, the Board held that compliance was "a matter for administrative determination" and that it was "administratively advised that the Union [had] fully complied with the filing requirements" (R. 62).

In granting enforcement of the Board's order,[1] the court below rejected, along with other contentions which are immaterial here, petitioner's argument that the Board was required to allege and prove for the record in its unfair labor practice proceeding that the charging union had filed with the Board and the Secretary of Labor the various documents required by Section 9 (f), (g), and (h) (R. 481).

ARGUMENT

As petitioner recognizes (Pet. 5), the precise question raised here was presented by the petition for certiorari denied in *Red Rock Company* v. *National Labor Relations Board*, 341 U.S. 950, No.

[1] In its original decision, the court modified the form of notice required by the Board's order. On the Board's petition for rehearing, this modification was withdrawn and the Board's order enforced in full (R. 496).

695, 1950 Term. In the brief opposing certiorari in the *Red Rock* case, to which the Court is respectfully referred, we pointed out that the three courts of appeals which have considered this question—the Court of Appeals for the Fourth Circuit, in *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840, as well as the court below and the Court of Appeals for the Fifth Circuit in *Red Rock*—have all agreed that nothing in the Act requires the Board to plead and prove a charging union's compliance with the filing requirements of Section 9 (f), (g), and (h). We submit that the reasons set forth at length in the opinion below (R. 474-481) and in our brief in opposition in the *Red Rock* case, pp. 10-13, demonstrate the correctness of this uniform conclusion, and that the present petition, like the one in the *Red Rock* case, poses no issue warranting review by this Court.

Petitioner's assertion (Pet. 3) of a conflict between the decision below and *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 341 U.S. 322, is plainly erroneous. Nothing in the *Highland Park* opinion suggests that compliance is a jurisdictional matter upon which the Board has the burden of proof; no such question was presented to or passed upon by the Court. As has been noted, petitioner's jurisdictional contention was presented by the petition for certiorari in the *Red Rock* case, in which certiorari was denied after the *Highland Park* decision.

CONCLUSION

The decision below is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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SEPTEMBER, 1951.

APPENDIX

The pertinent provisions of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are as follows:

* * * * *

SEC. 9. * * *

* * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and

agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary

of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under 9(e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

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